

DECISION



13948 Ms. Botford P.M.D.
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-198238

DATE: June 5, 1980

MATTER OF: David J. McCullough - Compensation for Services
Performed Beyond Limitation of Appointment

DIGEST: Employee of Department of the Interior who worked beyond his temporary appointment limitation due to administrative error may be compensated for services which were performed in good faith, but may not be credited with leave attributable to services performed between date appointment limitation was exceeded and date of permanent appointment.

This is in response to a request from Dennis J. Hubscher, an authorized certifying officer of the Department of the Interior, for a decision concerning Mr. David J. McCullough's entitlement to compensation for the time he worked after the expiration of his temporary appointment and before his appointment to a permanent position.

Mr. McCullough was hired on June 11, 1979, by the Department of the Interior as a Student Assistant-Accounting, under a temporary appointment which was not to exceed September 8, 1979. Effective September 9, 1979, he received an excepted temporary appointment not to exceed March 8, 1980, which was limited to 1,040 hours. Reassignment to a full-time career-conditional appointment was requested on February 21, 1980, and was approved effective March 4, 1980. He exceeded the hours limitation on his second appointment on February 23, 1980, and worked 89 regular hours and 1 overtime hour over his limit before his permanent appointment became effective.

The Department of the Interior reports that the appointment limitation was exceeded because Mr. McCullough worked a considerable amount of overtime and his time was not monitored by his supervisor since he expected that Mr. McCullough would receive a permanent appointment.

The issue is whether Mr. McCullough is entitled to compensation for services he performed between the date his temporary appointment limitation was exceeded

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and the date of his permanent appointment. In addition, the Department has asked us to confirm its determination that annual and sick leave may not be credited to Mr. McCullough's account for that period.

We conclude that Mr. McCullough is entitled to be paid for the hours he worked in excess of the limitation on his temporary appointment, but that he is not entitled to leave credit for that period.

The entitlement to compensation is based upon Timothy P. Connolly, B-186229, June 8, 1977. We held there that an employee may be paid when a limited appointment is not terminated on time because of administrative error and there is no fault on the part of the employee. The Department of the Interior reports that the mistake was caused by administrative error by the supervisor and by the personnel office and that the employee was not at fault. Accordingly, Mr. McCullough should be compensated for the value of his services rendered after the expiration of his temporary appointment but before his permanent appointment.

We base our conclusion concerning the crediting of leave on James C. Howard III, B-189741, April 4, 1978 (57 Comp. Gen. 406). In that decision we stated that a de facto employee does not accrue annual leave during the de facto period.

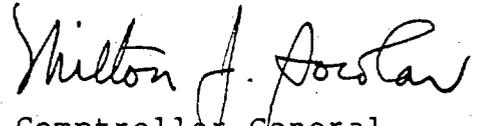
That decision has been modified by Victor M. Valdez, B-191977, August 17, 1979 (58 Comp. Gen. 734.) In that case we held that unpaid compensation, service credit for purposes of accrual of annual leave, and lump-sum payment for unused leave may be allowed to a person whose appointment is found to be improper or erroneous unless:

- (1) the appointment was made in violation of an absolute statutory prohibition, or
- (2) the employee was guilty of fraud in regard to the appointment or deliberately misrepresented or falsified a material matter.

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The Valdez rule, however, applies only to persons serving under presumably valid appointments which are later found to be defective. It does not apply to persons who have never been appointed or who serve after their appointments have expired. These persons are still considered to be de facto employees. They may be entitled to be paid for the reasonable value of their services if they serve in good faith with the expectation of being paid. Robert Storey 55 Comp. Gen. 109 (1975). But they are not considered to be "employees" for leave purposes under 5 U.S.C. § 6301.

Therefore, although Mr. McCullough is entitled to his unpaid compensation, he may not have his leave account credited with leave for the period between the expiration of his temporary appointment and his appointment to a permanent position.



For The Comptroller General
of the United States